



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04344/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 24 July 2018

Decision & Reasons Promulgated
On 10 September 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR QUADRI OLAMILEKAN JIMOH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Nigeria, has permission to challenge the decision of Judge Hudson of the First-tier Tribunal sent on 16 January 2018 dismissing his appeal against the decision made by the respondent on 24 April 2017 to refuse to issue him a residence card as the spouse of an EEA national.

2. There was no appearance by or on behalf of the appellant nor any explanation for his absence. It is likely that the appellant received the respondent Rule 24 notice stating that the latter did not oppose the appellant's grounds of appeal and this may well explain his absence today, even though he should still have notified the Tribunal that he would not be attending. I decided to proceed with the hearing in the absence of one of the parties and heard brief submissions from Mr Bates.
3. It is not in dispute that the notice of hearing sent to the appellant was dated 8 January 2018 and that it stated that the hearing had been fixed for 10 January 2018. The judge was satisfied that the appellant had been notified of the hearing in advance on strength of the fact that a member of the court staff had telephoned the appellant's representatives on 8 January 2018 asking for the appellant's bundle "and so the firm confirmed that they were aware of today's hearing". Leaving aside that the court file does not show (as Judge Chamberlain correctly observed when granting permission) that the words in quotes were accurate, it was clearly an error of procedure for the judge to consider that adequate notice of the hearing had been given. For that reason alone the appellant's allegation of procedural unfairness is made out and the respondent's Rule 24 notice has accepted in any event that the appellant's grounds are not opposed.
4. Accordingly I set aside the decision of the judge for material error of law consisting of a procedural error unfairly denying the appellant the right to a hearing in person.
5. For the above reasons I conclude:

that the judge's decision is to be set aside for material error of law;

that the case be remitted to the FtT (not before Judge Hudson).

No anonymity direction is made.

Signed:

Date: 31 July 2018



Dr H H Storey
Judge of the Upper Tribunal